

1 give her?

2 MR. HOWARD: You've got, you've got a tabbed set. Do
3 you want to exchange these?

4 JUDGE SIPPEL: Yeah. Wait a minute. Let's go off the
5 record a minute.

6 (Off the record.)

7 JUDGE SIPPEL: Okay, counsel for Scripps Howard has
8 provided a copy of -- to Ms. Schmeltzer, but it was made clear
9 that -- and Ms. Schmeltzer acknowledged that she had received
10 a tabbed set prior to today. All right. Well, you take it
11 the way you feel it's going to move the fastest, and if we
12 have a problem --

13 MS. SCHMELTZER: All right.

14 MR. GOLDSTEIN: Your Honor, would you like us, if we
15 have any comments that Ms. Schmeltzer does not note as she
16 goes along, to do it rather than come back and recap?

17 JUDGE SIPPEL: Good idea.

18 MS. SCHMELTZER: Yes.

19 MR. GOLDSTEIN: Okay, on page, page 4, it talks
20 about -- at the bottom -- on the top of page 5, it talks about
21 a comparison of the different stations based upon the
22 programming from September 23rd, '91, to September 29th, '91.
23 It seems to me that the truer comparison would have been with
24 the period before September 16th since that was a more
25 substantial portion of the license period. And if they want

1 to have a comparison, I would request that they make the
2 comparison for the period from the earlier part of the
3 license.

4 In other words, the comparison they used is based upon
5 the four-and-a-half hours which did not commence till
6 September 16th. The bulk of the license term they have three-
7 and-a-half hours of programming. So if they want to do the
8 comparison, I think it's more valid for the more substantial
9 portion of the license period.

10 MR. HOWARD: May I respond, Your Honor?

11 JUDGE SIPPEL: Yes.

12 MR. HOWARD: On that very point -- the Commission
13 recognized that it's the end of the renewal period that's the
14 most significant. So that's one response. This is the more
15 relevant period, towards the end of the renewal period, given
16 that it was planned in advance. And, second, we're talking
17 about a relatively short time here where, in fact, Scripps
18 Howard moved very quickly to initiate a, a program change that
19 it anticipated would better serve the needs and interests of
20 the community. And, thus, this is the appropriate comparison
21 to make.

22 And after Scripps Howard had an opportunity, starting
23 almost from the time that they acquired the station, this got
24 -- the planning began, as is demonstrated by the memorandum,
25 and this is the appropriate comparison to make.

1 JUDGE SIPPEL: Which is the, which is the memorandum
2 now you're referring to?

3 MR. HOWARD: That would be the Exhibit B, Attachment B.

4 JUDGE SIPPEL: Attachment B. This is Attachment B to
5 Ms. Barr's testimony?

6 MR. HOWARD: Yes.

7 MS. SCHMELTZER: Isn't that Attachment C?

8 MR. HOWARD: No. The exhibits with respect to
9 beginning the news programming is what --

10 MS. SCHMELTZER: Oh, okay.

11 MR. HOWARD: It shows it started July 19th. There was
12 a meeting --

13 MR. GOLDSTEIN: Your Honor, -- 44 was entirely
14 different from this. It was a total change in format which
15 was the predicate for the Commission's ruling, and this is not
16 a change in format by any way, shape or form.

17 MR. HOWARD: No, the premise is that -- or the, the
18 purpose for which it's cited is that it was the --

19 MR. GOLDSTEIN: The only one that's cited that is the
20 Bureau has been citing that. And so far, we haven't been able
21 to prevail that effectively. And I've been writing them.

22 MR. HOWARD: The issue being that we do look towards
23 the end of the, of the license period, that that's more
24 practical.

25 JUDGE SIPPEL: That's a -- Again, you know, this is the

1 way that Scripps Howard wishes to present its case and this is
2 the way it's going to come in. I mean, unless there's a --
3 The only serious question that I see is that, one, it isn't
4 clear and -- made clear that this was conceptualized before
5 the 3rd of September. And we're going to permit some voir
6 dire on that. So we're, we're, we're through paragraph 10 and
7 we're on paragraph 11?

8 MS. SCHMELTZER: I just have to make sure I catch all
9 the attachments now, too.

10 JUDGE SIPPEL: All right. Well, let's -- I think we're
11 okay on paragraph 11.

12 MS. SCHMELTZER: I, I don't have any objections to
13 paragraph 11. Or paragraph 12. Or paragraph 13 or 14 or 15.

14 MR. GOLDSTEIN: I would have a question on paragraph
15 12, Your Honor, and that is the basis for saying -- for
16 concluding NBC's "Today Show" is total news.

17 MS. SCHMELTZER: I think that's really cross exam,
18 Norm.

19 MR. GOLDSTEIN: Well, it's a legal question. I just
20 wanted the basis.

21 MR. HOWARD: We just happened to have a Commission
22 ruling on the point the "Today Show" is news.

23 MR. GOLDSTEIN: You just what?

24 MR. HOWARD: We have a Commission ruling that states
25 that the "Today Show" is news.

1 JUDGE SIPPEL: Is that the news -- is that it's news?

2 MR. HOWARD: It is news.

3 JUDGE SIPPEL: Oh, all right. -- stipulation to that
4 effect and --

5 MR. GOLDSTEIN: I'm not being argumentative. I just
6 want to raise what's been raised during the course of the
7 deposition. It was raised and I said that --

8 JUDGE SIPPEL: I think that'll be very helpful to get
9 it resolved with a stipulation. I mean, Mr. Howard's got the
10 authority. It can be done tomorrow morning. You can show him
11 the authority and will be stipulated into the record. No,
12 I'm, I'm not being critical of, of the comments.

13 MS. SCHMELTZER: Paragraph 16, I would move to strike
14 the words "and is" from the sentence "This Bureau's office was
15 and is staffed." I would move to strike "and is."

16 MR. GOLDSTEIN: -- is to what the status was during the
17 license term. That's all I'm interested in.

18 JUDGE SIPPEL: You're objecting to -- Well, okay, let
19 me --

20 MS. SCHMELTZER: I guess there's another part that says
21 "and through the present."

22 JUDGE SIPPEL: Your, your concern is or your, your,
23 your objection is that it's outside the relevant period.

24 MR. GOLDSTEIN: Your Honor, could we redo --
25 reconstruct paragraph 16 to include the first sentence, "To

1 cover state government activities during license term period.

2 During that -- "

3 JUDGE SIPPEL: I hate to do that without the witness
4 being here.

5 MR. GOLDSTEIN: Well, then let's just leave it. Okay.

6 JUDGE SIPPEL: I would, would just, would just leave it
7 and you can elect to cross examine on it or that's the way it
8 comes in.

9 MS. SCHMELTZER: I'm sorry, did we -- do we have a
10 ruling as to whether the, the little clauses that refer to the
11 present stay in or come out?

12 JUDGE SIPPEL: It's going to stay in. It stays in the
13 way it is, as far as the testimony. If you want to, if you
14 want to do anything on it with cross examination, but
15 otherwise -- I mean, it's, it's a question of weight and
16 relevance. I, I don't want to take the time to reconstruct
17 it, and, and striking is -- again is just another waste of
18 time. It's, it's going to be addressed as either helpful
19 information or not helpful.

20 MS. SCHMELTZER: Paragraph 17, I have the same
21 objection to the term "and through the present dedicates."

22 JUDGE SIPPEL: Well, that would be an easy one to
23 change. We could just change "dedicates" to "dedicated" and
24 then --

25 MS. SCHMELTZER: Right.

1 JUDGE SIPPEL: -- strike -- Any objection to that,
2 Mr. Howard?

3 MR. HOWARD: No, Your Honor.

4 JUDGE SIPPEL: All right. So that third line of 17
5 will read "license term dedicated a full-time reporter,"
6 etcetera.

7 MS. SCHMELTZER: I, I hate to belabor the point, but we
8 could change 16 very easily, too, just by taking out "and
9 through the present" and the words "and is."

10 JUDGE SIPPEL: All right, I'll do that. I'm striking
11 "and through the present." And what was the other change?

12 MS. SCHMELTZER: And then "This Bureau is staffed --
13 This Bureau's office was staffed."

14 JUDGE SIPPEL: Well --

15 MR. HOWARD: My only question is this included that it
16 was through the license term. I think it's, it's -- it is
17 inclusive and was intended to be inclusive.

18 JUDGE SIPPEL: I, I'm going to leave that. I'll, I'll
19 leave that as, as being a broad general description. If you
20 want to -- As I say, if you want to question the witness on
21 it, that's -- you're entitled to do it. But I will strike
22 "and through the present." And this is again with respect to
23 paragraph 16.

24 MS. SCHMELTZER: Skipping to paragraph 21, I would move
25 to strike the sentence "Scripps Howard consistently supported

1 and continued the station's prior efforts in these areas" as
2 conclusory.

3 JUDGE SIPPEL: Well, what -- Mr. Howard, how would you
4 respond to that?

5 MR. HOWARD: I'm, I'm at a loss, Your Honor. I don't
6 see how it's conclusory. It's a, it's a statement of fact as
7 to what occurred during the relevant period.

8 JUDGE SIPPEL: Well, it is, except that we don't know,
9 we don't know what the, what the, what the prior efforts were.

10 MR. HOWARD: Well, this just -- And we will not, we
11 will not claim credit for, for those prior efforts. This is
12 in for the purpose of showing that there is not a -- of the
13 station's performance.

14 JUDGE SIPPEL: Well, let me try, let me try it another,
15 let me try it another way. It says "With the exception of the
16 local morning news expansion -- public affairs programming --
17 did not -- " All right, all right. "Scripps Howard
18 consistently supported and continued the station's prior
19 efforts in these areas," these areas being public affairs
20 programming.

21 MR. GREENEBAUM: Should we take out "prior,"
22 Your Honor?

23 JUDGE SIPPEL: Yeah, well, that would help. That, that
24 would definitely help. What you're trying to do here is --
25 And we should really have the witness here. I'm just going

1 to -- I'm going to -- Ms. Schmeltzer, I'm going to ask you to
2 voir dire, and I will make a -- I will give you an opportunity
3 to move to strike based on her voir dire. I, I can see that
4 both ways. I, I, I, I can see that as being something that's,
5 that's neutral or something that, that could be prejudicial.

6 But I, I -- Mr. Greenebaum suggested striking the word
7 "prior" and I would do that. That does help. That's the
8 second sentence in paragraph 21. Is that it for 21?

9 MS. SCHMELTZER: Well, I have a general problem with
10 the last two sentences which state a negative. And I think
11 the facts will show what occurred before and after September
12 3rd, and this statement from the witness is conclusory and
13 self-serving.

14 JUDGE SIPPEL: Well, but it's conclusory -- It's, it's
15 in a factual context and she certainly would be -- she would
16 be in a position to observe that. Again, you can, you can,
17 you can question her. You can question her extensively. If
18 that's an objection, I'm going to overrule it subject to cross
19 examination.

20 MS. SCHMELTZER: All right, the next section is
21 entitled "Issues of Ascertainment." I have a lot of
22 difficulty with this whole section because vast portions of
23 the section are framed in the present. They're not geared to
24 the license renewal period. So, for instance, I would move to
25 strike all of paragraph 22 because it's not geared to the

1 license period.

2 UNIDENTIFIED SPEAKER: This was certainly intended to
3 describe the station's activities during the license period.

4 JUDGE SIPPEL: That's, that's a very general
5 introductory statement. And that statement, without more
6 evidence, isn't going to get -- isn't going anyplace. So --
7 part of that. Where do you see some very specific facts that
8 -- well, not very specific, just plain specific?

9 MS. SCHMELTZER: Well, the next paragraph, paragraph
10 23, "WMAR-TV's management and staff regularly conduct," that
11 is -- that speaks to the present. And, in fact, at the end --
12 the next sentence says "In addition to me, the station
13 personnel with the specific job responsibility who conducted
14 interviews," and then it goes to prior to and during the
15 renewal period.

16 MR. HOWARD: That ties it to the renewal period.

17 MS. SCHMELTZER: Well, my problem is this whole section
18 is all over the place. Some of it is present, some of it's
19 before the renewal period, some of it's after the renewal.

20 MR. HOWARD: The prior to is just to demonstrate that
21 these people were, were present at the time and there's
22 certainly no intention to claim credit for ascertainment
23 efforts that occurred after the renewal period. Or the
24 license term.

25 MS. SCHMELTZER: Does the first sentence speak to the

1 present or does it speak to the license renewal period?

2 MR. HOWARD: Speaks to the -- That, that was the
3 station practices then and now.

4 JUDGE SIPPEL: Well, you know, it's -- If the witness
5 was on the stand and was testifying to this on direct, you
6 know, live, direct testimony coming from the stand, and every
7 time the person stated -- testified to things the way they
8 were back when Gillett had it, there'd be an objection and the
9 objection would probably be sustained, unless there was some,
10 some explanation to show the nexus for historical purposes or
11 whatever. What I'm inclined to do is to ask -- is to have
12 counsel -- I mean, if this is all that we're talking about is
13 going through this testimony to pull out that which precedes
14 the renewal period, I would think that, that you could do that
15 without me, to a great degree, without the transcript, without
16 going on the record.

17 We could come back on tomorrow morning and go -- and
18 pick up from there. If, if you have a lot of this, this is --

19 MS. SCHMELTZER: I do have a lot of this.

20 JUDGE SIPPEL: Well, maybe just pass through that
21 section and later this afternoon or early tomorrow morning you
22 can get together with counsel, or you can show him what you
23 want taken out.

24 MS. SCHMELTZER: All right, going to the bottom of page
25 10, Attachment D, that's the resumés of employees. It

1 includes Maria Velleggia and Janet Covington. These were
2 never identified as prospective witnesses. We didn't depose
3 these people. I think their resumés are totally irrelevant.

4 MR. HOWARD: These documents were produced, Your Honor,
5 and they're, they're to show the experience of these people at
6 their jobs in conducting ascertainment in the community.

7 MS. SCHMELTZER: But we can't cross examine them.

8 JUDGE SIPPEL: Well, they're going to be -- you're
9 being told who they are.

10 MS. SCHMELTZER: Well, I mean, that's fine to tell me
11 who they are, but I don't think their resumés should come into
12 the record. That's Attachment D.

13 JUDGE SIPPEL: How, how -- I don't understand -- I
14 understand you're saying it's hearsay. Of course, it is. And
15 understand that the witnesses aren't here. But how are you,
16 how are you prejudiced by the resumé of Janet Covington?

17 MS. SCHMELTZER: What is Scripps using those resumés
18 for? What, what purpose --

19 JUDGE SIPPEL: He just said that. Mr. Howard just said
20 that. He said to show that they have the credentials to
21 pursue the --

22 MS. SCHMELTZER: And we haven't been able to depose
23 them and we're not able to cross examine them on either their
24 credentials or the work that they did.

25 JUDGE SIPPEL: Well, during discovery -- Did, did you

1 determine through discovery who was responsible for the
2 ascertainment efforts?

3 MS. SCHMELTZER: Well, I think I've earlier described
4 to you the level of the ascertainment efforts. There's --

5 JUDGE SIPPEL: I understand that. All right, I hear
6 what you're saying. Well --

7 MR. HOWARD: If I can answer the question, Your Honor,
8 yes, all these people's names were discussed during the
9 deposition of Emily Barr as, as people who conducted
10 ascertainment expansion.

11 JUDGE SIPPEL: Well, you were on notice that these were
12 the people that they were going to rely on, and your quarrel
13 is with respect to the, the back-up documentation for what
14 they did. That's what you -- And you've already, you've
15 already highlighted what it is that you're, you know, where
16 your concerns are on that. That can still be -- but I don't
17 see where the -- I, I just -- I, I don't see where you're
18 prejudiced by a -- by Janet Covington's resumé.

19 MS. SCHMELTZER: Well, for instance, this doesn't --
20 her resumé -- it, it says she has served as director of public
21 affairs since 1975, but she's not still director of public
22 affairs. I don't know when she left the station, I don't know
23 under what circumstances she left the station. Her notes have
24 been destroyed.

25 JUDGE SIPPEL: Well, we -- You know, you can tell me

1 that -- you've, you've explained that to us before. You're
2 going to have a chance to make a record on this through
3 witnesses. You look upon them as discrepancies, weaknesses,
4 credibility questions, reliability questions. You're going to
5 have all the opportunity in the world to develop that, and
6 that's about all -- Then we have a record that we can deal
7 with. But you're, you're, you're saying in the same context
8 that, that you're concerned about these and you're objecting
9 to these, these resums.

10 I don't see the -- I don't see where you're prejudiced
11 by the hearsay nature of these, and particularly in light of
12 what you're prepared to do in your cross examination. So if
13 that's an objection, I'm going to overrule it.

14 MS. SCHMELTZER: Okay, going to the top of page 11,
15 "WMAR-TV encourages employees," again that's framed in the
16 present. And the next paragraph is all framed, pretty much
17 all framed in the present as well.

18 MR. GOLDSTEIN: I thought we were dealing with a
19 generic --

20 MS. SCHMELTZER: -- all the generic --

21 JUDGE SIPPEL: Yeah. This is something -- Well,
22 Ms. Schmeltzer -- week -- we'll be here all week just editing.
23 If, if you want to try and work it out with them, that's fine.
24 If this is the way they want to go with their testimony and,
25 and, and you want a, you want a definitive ruling on these --

1 ruling, but I'm not going to change -- I'm not going to sit
2 down and go through this exercise of editing line by line past
3 versus present tense. They -- They're going to have to live
4 with their, with their record. And if you want to try and sit
5 down and work out a way that's, that's satisfactory to you and
6 to them that's going to straighten it out, then that's all
7 well and good. But let's not take up today's time.

8 MS. SCHMELTZER: Okay. My, my concern is that I think
9 it's important that we reach some sort of a, an agreement on
10 this 'cause, otherwise, the cross examination will take
11 forever.

12 MR. GOLDSTEIN: Your Honor, may I suggest that perhaps
13 counsel for Scripps Howard could contact Ms. Barr and go
14 through it paragraph by paragraph with her and just find out
15 that with respect to every representation as to what she did,
16 if that in fact was done during the license term? That's,
17 that's the only thing that's of probative value in this
18 particular proceeding. And I think the burden should more
19 effectively be on them, with all due respect.

20 JUDGE SIPPEL: Well, I --

21 MR. GOLDSTEIN: And I don't think it's that burdensome
22 for them to get that confirmation based upon what Mr. Howard
23 has stated.

24 JUDGE SIPPEL: I, I understand, but that's giving them
25 a license to rewrite the testimony. I don't know -- I'm

1 giving Ms. Schmeltzer an opportunity that she's going to
2 exercise some control over this process. I mean, at least
3 share in it. And if that's, that's what counsel wants to
4 agree to, that's fine. That's fine. But then, obviously,
5 it's not -- To meet your objection -- And you do have a point,
6 there, there, there is no relevance to her testimony that goes
7 past the September 3rd or September 30 cut off, depending on
8 how you look at it. But I'm not going to go through it here
9 like this.

10 MS. SCHMELTZER: Okay.

11 JUDGE SIPPEL: How much of it -- How many, how many
12 paragraphs are there where this is a problem?

13 MS. SCHMELTZER: Well, it's at least through that
14 whole -- most of that section. Maybe not as much at the end.

15 MR. HOWARD: I think, Your Honor, it just was intended
16 to describe the process at the start. And then when you get
17 to the specifics, you see that it's all tied into the, the
18 events during the renewal period.

19 MS. SCHMELTZER: On page 14, Your Honor, the end of
20 paragraph 31, I would object to the clause "in any Community
21 Advisory Board meetings held during the relevant time period"
22 because Mr. Kleiner has already testified there were none.

23 JUDGE SIPPEL: And where is that? Is that the page 14,
24 at the bottom of page --

25 MS. SCHMELTZER: It's the bottom of paragraph 31.

1 JUDGE SIPPEL: Thirty-one. Well, what do you have to
2 say to that, Mr. Howard? I don't --

3 MR. HOWARD: Well, that's certainly true, that there
4 were -- I'm not trying to suggest that there were Community
5 Advisory Board meetings. That's just a description of the
6 process that the station undertook in ascertainment. The
7 Community Advisory Board was in existence during this time,
8 and -- even though it didn't meet. And, thus, the fact that
9 as part of her responsibilities Ms. Covington's duties
10 included doing a report on any meetings that occurred during
11 that time. It's a description of her duties, not a
12 representation that any meetings occurred.

13 JUDGE SIPPEL: Well, it certainly would leave the
14 impression to the reasonable reader, without having that kind
15 of insight, would, would find that to be just as is stated,
16 which would imply that there were some meetings. I'll strike
17 it.

18 MR. GOLDSTEIN: Paragraph, paragraph 42 of her
19 testimony makes quite clear that they did not meet.

20 JUDGE SIPPEL: Well, then there's no harm in striking
21 it.

22 MR. GOLDSTEIN: No, none at all.

23 MR. HOWARD: What is the striking --

24 JUDGE SIPPEL: The very end of paragraph 31, where it -
25 - a period will go after the word "efforts."

1 MR. HOWARD: Thank you.

2 JUDGE SIPPEL: And then the rest is stricken. And
3 where did you say the other reference was to that, in
4 paragraph 42?

5 MR. GOLDSTEIN: Paragraph 42 deals with the Community
6 Advisory Board.

7 JUDGE SIPPEL: Okay. It's 20 minutes after 3 and, I
8 mean, I can see that this is, this is becoming quite tedious
9 because of what you pointed out, Ms. Schmeltzer. And I, I
10 think it's, it's appropriate to this case and everybody that
11 we adjourn till tomorrow morning and see what can be done.
12 You know, you're dealing with the usual people. You know what
13 the problems are and see if there's an agreeable way, even if
14 it involves recasting the testimony to redoing the testimony.

15 It's not going to hold things up because Ms. Barr is
16 going to be in here to testify on the 8th, but I think that
17 that's the sensible way to try and get over this. All right,
18 if there's no objection to that, we're going to -- It's 25
19 minutes after 3 and we're going to recess then until 9:30
20 tomorrow morning.

21 (Whereupon, at 3:25 p.m., the hearing was adjourned.)
22
23
24
25

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

APPLICATIONS OF SCRIPPS HOWARD BROADCASTING

Name AND FOUR JACKS BROADCASTING, INC.

MM DOCKET NO. 93-94

Docket No.

WASHINGTON, D.C.

Place

OCTOBER 5, 1993

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 97 through 263, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

October 14, 1993

Date

Lou Deosaran

Lou Deosaran, Transcriber
Free State Reporting, Inc.

October 15, 1993

Date

Diane S. Windell

Diane S. Windell, Proofreader
Free State Reporting, Inc.

October 15, 1993

Date

Alice Wehner

Alice Wehner, Reporter
Free State Reporting, Inc.

FREE STATE REPORTING, INC.

Court Reporting Depositions

D.C. Area 261-1902

Balt. & Annap. 974-8947